

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

MICHAEL P. DONOVAN, as he is ADMINISTRATOR,  
LOCAL 103, I.B.E.W. HEALTH BENEFIT PLAN;  
ELECTRICAL WORKERS' PENSION FUND, LOCAL 103,  
I.B.E.W.; ELECTRICAL WORKERS' DEFERRED INCOME  
FUND, LOCAL 103, I.B.E.W.; JOINT APPRENTICESHIP  
AND TRAINING FUND; and LAWRENCE J. BRADLEY,  
as he is EXECUTIVE SECRETARY-TREASURER,  
NATIONAL ELECTRICAL BENEFIT FUND,

Plaintiffs,

v.

INFRA-RED BUILDING AND POWER SERVICE, INC.,  
Defendant,

and

BANK OF AMERICA,  
Trustee Process Defendant

CIVIL ACTION  
NO.

**VERIFIED COMPLAINT**

**NATURE OF ACTION**

1. This is an action brought pursuant to §§502 and 515 of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §§1132(a)(3) and (d)(1) and 1145 and pursuant to §301 of the Labor Management Relations Act ("LMRA"), as amended, 29 U.S.C. §185, by employee benefit plans to enforce the obligation to pay fringe benefit contributions, working dues deducted from employees' pay, together with interest, liquidated damages, and legal fees and costs under the terms of a collective bargaining agreement and the plans.

### **JURISDICTION**

2. The Court has exclusive jurisdiction of this action pursuant to §502(a), (e) and (f) of ERISA, 29 U.S.C. §1132(a), (e) and (f), and concurrent jurisdiction pursuant to §301 of the LMRA, as amended, 29 U.S.C. §185, without respect to the amount in controversy or the citizenship of the parties.

### **PARTIES**

3. Plaintiff Michael P. Donovan is the Administrator of the Local 103, I.B.E.W. Health Benefit Plan (“Health Plan”). The Health Plan is an “employee welfare benefit plan” within the meaning of §3(1) of ERISA, 29 U.S.C. §1002(1). The Health Plan is administered at 256 Freeport Street, Boston, Massachusetts, within this judicial district.

4. Plaintiff Michael P. Donovan is also the Administrator of the Electrical Workers’ Pension Fund, Local 103, I.B.E.W. (“Pension Fund”). The Pension Fund is an “employee pension benefit plan” within the meaning of §3(2)(A) of ERISA, 29 U.S.C. §1002(2)(A). The Pension Fund is administered at 256 Freeport Street, Boston, Massachusetts, within this judicial district.

5. Plaintiff Michael P. Donovan is also the Administrator of the Electrical Workers’ Deferred Income Fund, Local 103, I.B.E.W. (“Deferred Income Fund”). The Deferred Income Fund is an “employee pension benefit plan” within the meaning of §3(2)(A) of ERISA, 29 U.S.C. §1002(2)(A). The Deferred Income Fund is administered at 256 Freeport Street, Boston, Massachusetts, within this judicial district.

6. Plaintiff Michael P. Donovan is also the Administrator of the Joint Apprenticeship and Training Fund (“JATC”). The JATC is an “employee welfare benefit plan” within the

meaning of §3(1) of ERISA, 29 U.S.C. §1002(1). The JATC is administered at 256 Freeport Street, Boston, Massachusetts, within this judicial district.

7. Plaintiff Lawrence J. Bradley is the Executive Secretary-Treasurer of the National Electrical Benefit Fund (“National Fund”). The National Fund is an “employee pension benefit plan” within the meaning of §3(2)(A) of ERISA, 29 U.S.C. §1002(2)(A). The National Fund is administered at 2400 Research Boulevard, Suite #500, Rockville, Maryland.

8. The Health Plan, Pension Fund, Deferred Income Fund, JATC, and National Fund are multi-employer plans within the meaning of §3(37)(A) of ERISA, 29 U.S.C. §1002(37)(A). They are hereinafter collectively referred to as the “Funds.”

9. Defendant Infra-Red Building and Power Service, Inc. (“Infra-Red”) is a Massachusetts corporation with a principal place of business at 152 Centre Street, Holbrook, MA 02343. Infra-Red is an employer engaged in commerce within the meaning of §3(5) and (12) of ERISA, 29 U.S.C. §1002(5) and (12) and within the meaning of §301 of the LMRA, 29 U.S.C. §185.

10. Bank of America is a banking institution which, on information and belief, holds assets of the Defendant.

### **FACTS**

11. On or about May 2, 2000, Infra-Red signed a Letter of Assent authorizing the Boston Chapter, of the National Electrical Contractors Association (“NECA”) as its collective bargaining representative for all matters contained in, or pertaining to, the then current and any subsequent collective bargaining agreements between NECA and the International Brotherhood of Electrical Workers Local 103 (“Union”). A copy of Infra-Red’s Letter of Assent is attached hereto as Exhibit A.

12. Infra-Red has been a party to successive collective bargaining agreements, including the collective bargaining agreement which was in effect from September 1, 2016 through August 21, 2019 as well as the current collective bargaining agreement which is in effect from September 1, 2019 through August 31, 2023. This suit concerns under-reported benefit contributions from the earlier period. Accordingly, a copy of the 2016-2019 collective bargaining agreement (“Agreement”) is attached hereto as Exhibit B.

13. The Agreement requires signatory employers such as Infra-Red to make contributions to the Funds for each hour worked by covered employees. The Agreement specifies the amount to be contributed by an employer to each of the Funds for each hour worked. In addition to the named Plaintiff Funds, the Agreement specifies the amounts to be contributed to the Electrical Industry Labor-Management Cooperation Trust Fund (“EILMCT”), the National Labor-Management Cooperation Committee (NLMCC”), the Administrative Maintenance Fund, and the National Electrical Industry Fund. The Administrator is authorized to collect monies due to all the Funds. The Agreement specifies that delinquent employers are responsible for payment of contractual liquidated damages and legal fees and costs for unpaid amounts to the EILMCT and NLMCC.

14. The Agreement further specifies that these amounts are to be paid by the 15<sup>th</sup> day of the month following the month in which the work is performed. The Agreements also specify that working dues, including working assessment, COPE/PAC contributions, and Holiday and Vacation Fund amounts, are to be deducted from the wages of employees and forwarded to the Union. The Funds and the Union have a separate agreement which allows the Funds to collect working dues on behalf of the Union.

15. Section 6.38(f) of the Agreement provides that a delinquent fee must be paid for all payments made after the 15<sup>th</sup> day of the month the payment is due. The Trustees of the Funds have determined that the delinquent fee to be charged on the late payment of contributions be set at 1.5 percent per month.

16. Signatory employers such as Infra-Red are obligated to submit remittance reports each month, in which they list the hours worked by their employees and calculate the amount of benefit contributions and working dues owed for all work performed by their employees in that month.

17. Section 6.8(g) of the Agreement provides that Employers are also required to submit to periodic audits of their books and records to verify the accuracy of their remittance reports.

18. The Funds performed a payroll audit of Infra-Red's books and records for the period January 1, 2015 through December 31, 2017. The audit disclosed that Infra-Red's remittance reports for that period under-reported the amounts owed by Infra-Red for work performed by its employees. Despite numerous requests for payment, Infra-Red has failed and refused to pay the audit balance.

19. The audit disclosed that Infra-Red owes \$36,897.41 in under-reported principal benefit contributions, \$9,421.96 in interest as of June 16, 2020, late interest charge of the Deferred Income Fund of \$815.75 as of June 16, 2020, and a net payroll audit fee of \$425.40. Infra-Red was informed of the audit findings by letter dated June 16, 2020 directing Infra-Red to pay the total owed of \$47,560.52. A second notice was sent to Infra-Red on December 21, 2020, and no payment has been received.

20. On August 24, 2021, Infra-Red was informed that suit would be brought to collect the audit balance and all amounts owed to the Funds including and any additional principal and interest as well as liquidated damages and legal fees and costs owed to the Funds. Attached to the demand letter was a redacted copy of the audit findings and billing letters dated June 16, 2020 and December 21, 2020. The demand letter and enclosure were sent by delivery-receipted email as well as first class certified mail, to the defendant. A copy of the demand letter and enclosures is attached hereto as Exhibit C.

21. In sum, Infra-Red owes a minimum of \$47,560.52, plus additional unliquidated amounts, statutory liquidated damages, interest, and legal fees and costs, which continue to accrue.

22. A copy of this Complaint is being served upon the Secretary of Labor and the Secretary of the Treasury by certified mail as required by §502(h) of ERISA, 29 U.S.C. §1132(h).

#### **COUNT I - VIOLATION OF ERISA**

23. Plaintiffs incorporate by reference paragraphs 1 through 22 above.

24. Absent an order from this Court, Infra-Red will continue to refuse and fail to pay the benefit contributions and interest it owes to the Funds, and the Funds and their participants will be irreparably damaged.

25. The failure of Infra-Red to make payment of all contributions owed on behalf of all covered employees violates §515 of ERISA, 29 U.S.C. §1145.

#### **COUNT II - VIOLATION OF THE COLLECTIVE BARGAINING AGREEMENT**

26. Plaintiffs incorporate by reference paragraphs 1 through 25 above.

27. The Agreement is a contract within the meaning of §301 of the LMRA.

28. Infra-Red's failure to pay all benefit contributions and interest owed on behalf of its covered employees and to remit the working dues Infra-Red already deducted out of its employees' wages, violates the terms of the Agreement.

**RELIEF REQUESTED**

WHEREFORE, Plaintiffs request that this Court grant the following relief:

- a. Enter a preliminary and permanent injunction enjoining Infra-Red Building and Power Service, Inc. from refusing or failing to make payment of benefit contributions, interest, working dues, legal fees and costs, and statutory liquidated damages owed to Plaintiff Funds;
- b. Order the attachment of the machinery, inventory, vehicles, equipment, and accounts receivable of Infra-Red Building and Power Service, Inc. up to the amount of \$47,560.52;
- c. Order the attachment by trustee process of the bank accounts of Infra-Red Building and Power Service, Inc. held by Bank of America up to the amount of \$47,560.52;
- d. Order Infra-Red Building and Power Service, Inc. to make available to the Plaintiff Funds or their duly authorized representative all of its payroll records, including, but not limited to, file copies of contribution reports, payroll tax returns, employees' earning records and hours worked, weekly payroll registers, certified payrolls, cash disbursement journals, accounts receivable, and a complete listing of all job locations from January 1, 2018 until the date of the Court's order for the purpose of ascertaining the full amount of unpaid contributions for that period;
- e. Enter judgment in favor of the Plaintiff Funds on Count I against Infra-Red Building and Power Service, Inc. for all benefit contributions owed through the present, together with any additional amounts determined by the Court to be owed the Funds or which may

become due during the pendency of this action, plus interest on the unpaid contributions, statutory liquidated damages, and legal fees and costs, pursuant to 29 U.S.C. §1132(g)(2);

f. Enter judgment in favor of the Plaintiff Funds on Count II against Infra-Red Building and Power Service, Inc. for all benefit contributions and working dues owed through the present, plus interest and any additional amounts determined by the Court to be owed the Funds or which may become due during the pendency of this action;

g. Such further and other relief as this Court may deem appropriate.

Respectfully submitted,

MICHAEL P. DONOVAN, as he is  
ADMINISTRATOR, LOCAL 103, I.B.E.W.  
HEALTH BENEFIT PLAN, *et al.*,

By their attorneys,

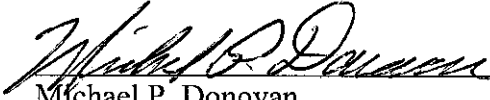
/s/ Kathryn S. Shea  
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September 30, 2021

**VERIFICATION**

I, Michael P. Donovan, Funds Administrator for the Local 103, I.B.E.W. Health Benefit Plan, et al., verify that I have read the above Amended Complaint, and the statements set forth therein are true and accurate based on my personal knowledge, except for those statements made on information and belief, and, as to those statements, I am informed and believe them to be true.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 30 DAY OF SEPTEMBER, 2021.

  
Michael P. Donovan  
Funds Administrator